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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,786	12/15/2000	Kevin McCombe	40101/01101	3798
30636	7590	10/13/2004	EXAMINER	
FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038				BAROT, BHARAT
ART UNIT		PAPER NUMBER		
		2155		

DATE MAILED: 10/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/738,786	MCCOMBE ET AL.
	Examiner	Art Unit
	Bharat N Barot	2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 August 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____.  |

**RESPONSE TO AMENDMENT**

1. Claims 1-11 remain for further examination.

**The new grounds of rejection**

2. Applicants' amendments and arguments with respect to claims 1-11 filed on August 02, 2004 have been fully considered but they are deemed to be moot in view of the new grounds of rejection.

**Claim Rejections - 35 USC § 103(a)**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morwood (U.S. Patent No. 6,470,346) in view of Ferguson (U.S. Patent No. 6,769,019).

5. As to claim 1, Morwood disclose a system for managing a plurality of client processes (see abstract; figures 1-2; and column 2 lines 33-67), comprising: a client task within which the client processes will be executed (column 1 lines 50-63; column 2 lines 33-67; and column 14 line 64 to column 15 line 52); and a manager task running at a higher priority than the client task, the manager task queuing the client processes into the client task in priority order (figures 2-3; column 4 lines 15-22; and column 8 line 16 to column 9 line 28).

However, Morwood does not explicitly disclose that the manager task kills the client task when a current one of the client processes is not completed within a predetermined time period.

Ferguson explicitly discloses that the manager task kills the client task when a current one of the client processes is not completed within a predetermined time period (figures 10-11 and 15; column 11 line 63 to column 12 line 7; column 13 lines 17-38; column 14 lines 11-42; and column 18 lines 1-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Ferguson as stated above with the system of Morwood for managing a plurality of client processes because it would have enabled a client process to control network communication traffic, maximized network bandwidth, and reduces or eliminated time delay.

6. As to claims 2-3, Morwood disclose that the manager task restarts the client task and queues a next one of the client processes into the client task or requeues the current client process into the client task (figures 3, 11, and 14; column 9 lines 9-21; column 12 lines 16-37; and column 13 lines 24-47).

7. As to claims 4-5, Morwood disclose that the client task sends a response to the manager task indicating the execution of the current client process is complete; and the manager task, when receiving the response from the client task, queues a next one of the client processes into the client task (column 9 lines 4-21; column 10 lines 51-64; and column 12 lines 6-37).

8. As to claims 6-10, they are also rejected for the same reasons set forth to rejecting claims 1-5 above, since claims 6-10 are merely a method of operation for the apparatus defined in the claims 1-5.

9. As to claim 11, they are also rejected for the same reasons set forth to rejecting claim 1 above, since claim 11 is merely a computer-readable storage medium storing a set of instructions to manage the apparatus defined in the claim 1.

**Contact Information**

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bharat Barot whose telephone number is (703) 305-4092. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alam, Hosain, can be reached at (703) 308-6662. A central official fax number is (703) 872-9306.

Any inquiry of general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-3900.

Patent Examiner Bharat Barot

Art Unit 2155

October 04, 2004



BHARAT BAROT  
PRIMARY EXAMINER